

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.56.409,) ON PROPOSED AMENDMENT AND
8.56.413, 8.56.602A, 8.56.602B,) ADOPTION
8.56.602C and 8.56.607 pertaining)
to fee schedule, temporary)
permits, permits - practice)
limitations, course requirements)
for limited permit applicants,)
permit examinations, and permit)
fees, and the adoption of NEW)
RULE I, related to fee abatements)

TO: All Concerned Persons

1. On June 27, 2003, at 10:00 a.m., a public hearing will be held in room 438, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Radiologic Technologists no later than 5:00 p.m., on June 20, 2003, to advise us of the nature of the accommodation that you need. Please contact Helena Lee, Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2385; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrts@state.mt.us.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

8.56.409 FEE SCHEDULE (1) remains the same.
~~(a) Examination fee~~ \$30
(b) through (g) remain the same, but are renumbered (a) through (f).

AUTH: ~~37-1-101~~, 37-1-134, 37-14-202, ~~37-14-310~~, MCA
IMP: 37-1-134, ~~37-14-303~~ 37-14-309, 37-14-310, MCA

REASON: The Board finds there is reasonable necessity to amend this rule and eliminate the examination fee because the board has not administered a state-wide examination for radiologic technologists for a number of years. Examinations are administered by specified national organizations. Approximately 40 individuals annually apply for initial licensure as a radiologic technologist. If the Board was collecting the \$30 examination fee from those persons, there would be a \$1,200

impact to those individuals.

8.56.413 INSPECTIONS (1) through (3) remain the same.

(4) It is up to the employer of a licensee or permit holder to determine whether licenses and permits must be posted at the facility.

(5) Licenses or permits not posted must be immediately available to the inspector upon request.

AUTH: 37-14-202, MCA

IMP: 37-14-307, 37-14-322, MCA

REASON: The Board finds there is reasonable necessity to amend this rule due to safety concerns. At some facilities, licensees do not want to post their licenses because the license includes the licensee's home address, which the licensee may, for reasons of personal safety, not wish to be readily accessible to the public. However, the proposed amendments make it clear that the decision whether or not to post licenses at a facility rests with the employer. If not posted, the license needs to be made available to Board inspectors upon request.

8.56.602A PERMITS - PRACTICE LIMITATIONS (1) Upon successful completion of the required formal training and the required examination, the board may issue a limited permit to the applicant which specifies the x-ray procedures the limited permit ~~technician~~ holder is authorized to perform. ~~The limitations of the permit are~~ limited permit holder may only take x-rays as follows:

(a) ~~Chest~~ in the chest area, consisting of the thoracic region including the lungs, AP (anterior posterior) or PA (posterior anterior) views, lateral and apical lordotic routine chest exposures and other views as needed by the ordering physician or interpreting radiologist, but in no case involving mammography procedures;

(b) ~~Extremities~~ of the extremities, AP or PA, lateral and oblique routine exposures of the extremities;

(c) ~~Spine~~ of the spine, AP, lateral and oblique routine exposures of the cervical, thoracic and lumbar spine areas;

(d) ~~Skull~~ All all routine views of the skull and sinuses, with the exception of internal auditory meatus canal series and mastoid series;

(e) ~~Abdomen~~ of the abdomen, consisting of the region from the diaphragm to the pubis, routine supine and upright AP abdomen projection, and IVP (intravenous pyelogram) scout and follow-up films as specified by the supervising radiologist or physician; and

(f) ~~for G-I- (gastro-intestinal) tract fluoroscopy~~ and associated overhead films, - the limited permit technician holder may assist the physician in fluoroscopic examination of the G-I- tract and may produce films of all associated overhead views as ordered by the physician.

(2) A limited practice permit holder may perform bone densitometry examinations upon successful completion of the bone

densitometry equipment operators examination administered by the American registry of radiologic technologists (ARRT) or the international society of clinical densitometry (ISCD).

(3) Forty-hour limited permit holders are not authorized or permitted to perform fluoroscopy procedures due to the difficulty in monitoring, limiting, and controlling the accumulative doses of ionizing radiation.

(4) A student of an ARRT approved radiologic technologist program is allowed to perform procedures with portable fluoroscopy equipment (also known as c-arm), provided the student has submitted documentation to the board that:

(a) identifies the student as being enrolled in an ARRT approved radiology program;

(b) the student will be performing portable fluoroscopy procedures as a student with routine supervision;

(c) identifies the names of the student's clinical supervisors; and

(d) identifies the facility which will allow the student to receive clinical experience, including the performance of duties outside the scope of a limited permit holder.

(5) If a student of an ARRT approved radiologic technologist program has completed the first two semesters of the program or its equivalent, as determined by the board, and has become a limited permit holder, that person may perform procedures while operating portable fluoroscopy equipment and may be compensated.

AUTH: 37-14-202 ~~37-14-306~~, MCA

IMP: 37-14-301, 37-14-306, MCA

REASON: The Board finds there is reasonable necessity to amend ARM 8.56.602A to clarify that a physician who is not a radiologist may order certain procedures.

The Board finds there is reasonable necessity to allow limited permit holders who have demonstrated their competence to perform bone densitometry. The board finds there is a need for additional persons to perform bone densitometry in Montana. The ARRT and the ISCD perform the examination for bone densitometry and the board recognizes those credentials.

The Board finds there is reasonable necessity to amend the rule to clarify that a 40-hour limited permit holder has not received adequate training in the use of fluoroscopy to adequately protect the public from the risk factors associated with the use of ionizing radiation that is used during fluoroscopy.

The Board finds there is reasonable necessity to amend this rule in order to make sure that students enrolled in an ARRT approved radiologic technologist program obtain clinical experience in the use of portable fluoroscopy equipment. Limited permit holders are not otherwise allowed to perform fluoroscopy.

8.56.602B COURSE REQUIREMENTS FOR LIMITED PERMIT APPLICANTS (1) through (3)(e) remain the same.

(f) ~~G-I- tract fluoroscopy~~ and associated overhead films - eight hours,

(g) remains the same.

(4) and (5) remain the same.

AUTH: ~~37-1-131,~~ 37-14-202 ~~37-14-301,~~ 37-14-306, MCA

IMP: 37-14-301, 37-14-306, MCA

REASON: The board finds there is reasonable necessity to amend the rule to clarify that eight hours of limited training is insufficient to allow limited permit holders to perform fluoroscopy.

8.56.602C PERMIT EXAMINATIONS (1) through (3) remain the same.

(4) Applicants may review their examination papers with administrative staff for the board at the ~~Division of Professional and Occupational Licensing, 111 North Jackson, Helena, Montana 59620~~ board office or at an approved site designated by the board.

(5) remains the same.

(6) Applicants for a limited permit (40-hour course) who fail an examination twice must retake that portion of the formal x-ray training before being allowed admission to a third examination. Upon completion of the additional course work in the failed area, the applicant must file a new application accompanied by the appropriate fees, with the board office.

(a) On a case-by-case hardship basis, the board may allow an unsuccessful applicant to receive tutoring in lieu of the additional course work. A tutor must have at least five years experience as a licensed radiologic technologist and possess a current ARRT card. The tutor must submit for board approval the tutor's qualifications and an outline of the materials and topics to be studied by the applicant under the instruction of the tutor. The applicant is responsible for paying all costs associated with the tutorial.

(7) Student permit applications (two semesters or its equivalent in an ARRT approved radiologic technologist program) who have failed the general examination twice must re-take the general examination plus all six category exams.

(8) Temporary permit applicants (ARRT approved program graduates) who have failed the ARRT exam three times must take the general exam plus all six category exams.

(7) and (8) remain the same, but are renumbered (9) and (10).

AUTH: ~~37-1-131,~~ 37-14-202, ~~37-14-306,~~ MCA

IMP: 37-14-306, MCA

REASON: The Board finds there is reasonable necessity to amend this rule to clarify the requirement for additional study in the failed area(s) and re-taking of the exam requirement for the

three levels of permit holders for purposes of public safety. The Board has recently heard from unsuccessful applicants who, for reasons of hardship, have sought a speedier alternative to waiting until the next regular class is offered. The Board finds that requiring additional study in the areas failed is the best way to ensure only qualified applicants are becoming licensed to practice.

8.56.607 PERMIT FEES

(1) through (7) remain the same.

(8) A temporary permittee who applies for a full radiological technologist license shall pay only an additional \$20 for the full radiologic technologist license.

AUTH: ~~37-1-134~~, 37-14-202, 37-14-306, 37-14-310, MCA

IMP: ~~37-1-134~~, ~~37-14-303~~, ~~37-14-305~~, 37-14-306, 37-14-309, 37-14-310, MCA

REASON: The Board finds that there is reasonable necessity to charge a person with a temporary permit only an additional \$20 fee to equal the full \$90 fee radiological technologists must pay to become licensed. A person who has already obtained a temporary permit has already had their application processed by the board, and thus the incremental cost of issuing a full license is much smaller than it would be to an applicant who did not already possess a temporary practice permit. The Board is required to establish fees commensurate with its costs. The proposed amendment will establish in rule the policy the Board has exercised for some time. Approximately 20 persons a year are estimated to be affected by the proposed amendment, but there will be no change in Board revenue or expense.

4. The proposed new rule provides as follows:

NEW RULE I ABATEMENT OF RENEWAL FEES (1) Pursuant to 17-2-302, MCA, state programs that charge a fee for services are generally not permitted to let their cash balance exceed twice the program's annual appropriation. However, despite the best projections of the board, there may be times when cash balances exceed the amount authorized by statute. This rule is intended to provide a process for when the board needs to reduce its cash balance with a standard methodology to do so, in fair and equitable manner. This rule provides for an abatement of certain fees when the board's cash balance is excessive.

(2) Except as provided by (3), when the board has an excessive cash balance, the department may abate the renewal fees for the board's licensees or registrants for one or more renewal cycles until the board's cash balance does not exceed the allowable maximum.

(a) The abatement of renewal fees may be the total amount of the renewal fee, or only a specified portion of the renewal fee.

(b) If the board has more than one category of renewals, the abatement must be made on a roughly proportional basis to

fairly, equitably, reasonably and economically distribute the abatement among the program's licensees or registrants. The department may, for good cause, completely abate the renewal fee for certain classes of licensees or registrants and not for other classes, if the administrative cost of processing a reduced renewal fee for all classes is disproportionately high. In such a case, the department must attempt in any future abatements to equitably treat those classes of renewals which have borne a relatively higher proportion of renewal fees.

(c) The fact that the renewal fee is abated for any given renewal cycle does not excuse the licensee or registrant from otherwise fulfilling the renewal requirements, including submission of a renewal application and/or continuing education documentation. The board, to the extent it so provides by rule, may impose a late fee on untimely submissions of renewal applications or other required documentation.

(3) This rule does not apply when an exception to 17-2-302, MCA, exists and is applicable to the board's cash balance. As an example, if the board adopts a three-year renewal cycle, the board will have an apparent excess cash balance during the first year of the renewal cycle, based on a collection of three year's worth of fees for operations expenses.

(4) This rule does not relieve the board from the duty to establish fees at a level commensurate with costs.

AUTH: 37-1-101 and 37-14-202, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134 and 37-14-310, MCA

REASON: There is reasonable necessity to adopt NEW RULE I to ensure that the Board of Radiologic Technologists and the Department have a methodology in place to promptly eliminate excess cash accumulations in the Board's licensing programs. Excess cash accumulations are generally prohibited by 17-2-302, MCA, and a reduction in fees is required pursuant to 17-2-303, MCA. As the result of a \$35,274 refund by the Department to the Board as the result of a misallocation of Oracle expenses, the Board's cash balance now exceeds twice its existing annual appropriation authority. The Board proposes that the Department abate renewal fees to bring the Board's cash balance to an appropriate level. The Board and the Department believe that abatement of renewal fees is the best way to target the licensees and limited permit holders who have paid fees into the program for the temporary relief provided by an abatement.

Total annual fee revenue for the Board is approximately \$55,850, which is close to the Board's annual appropriation authority. A one-year abatement of renewal fees will affect approximately 730 licensees (\$50 annual renewal fee) and approximately 300 limited permit holders (\$40 annual renewal fee). The total renewal fees abated in a year is estimated to be \$48,500, an amount which should reduce the Board's cash balance to an appropriate level. The Board has concluded that a temporary abatement, rather than a permanent fee reduction, is the most appropriate solution to address the Board's excess cash

balance.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrts@state.mt.us and must be received no later than 5:00 p.m., June 27, 2003.

6. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/rts>, in the Rules Notices section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address does not excuse late submission of comments.

7. The Board of Radiologic Technologists maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Radiologic Technologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Radiologic Technologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrts@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

8. Lon Mitchell, attorney, has been designated to preside over and conduct this hearing.

9. The Board of Radiologic Technologists anticipates meeting in July at 301 South Park Avenue, Helena, to consider the comments made by the public, the responses to those comments, and take final action on the proposed amendments. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations.

10. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JANE CHRISTMAN, CHAIRMAN

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State May 12, 2003